

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

D.W. HUNTER, an Individual, LARNELL  
EVANS, JR., an Individual FOR THE ESTATE OF  
ANNA SHORT HARRINGTON, an Individual,

Plaintiffs,

vs.

PEPSICO, INC. a North Carolina Corporation, THE  
QUAKER OATS COMPANY, a New Jersey  
Corporation, JANET LYNN SILVERBERG, an  
individual, PINNACLE FOODS GROUP, LLC, a  
Delaware Corporation, THE HILLSHIRE  
BRANDS COMPANY, a Maryland Corporation,  
and JOHN DOES 1 through 25, inclusive,

Defendants.

CASE NO. 14CV6011

The Honorable Edmond E. Chang

**PEPSICO, INC., THE QUAKER OATS COMPANY  
AND JANET LYNN SILVERBERG'S MOTION TO DISMISS**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants PepsiCo, Inc. ("PepsiCo"), The Quaker Oats Company ("Quaker"), and Janet Lynn Silverberg (collectively the "PepsiCo Defendants"), respectfully move this Court for an order dismissing Plaintiffs' amended complaint with prejudice. In support, the PepsiCo Defendants state as follows:

1. On August 5, 2014, Plaintiffs filed their first complaint.
2. Since filing the original complaint, Plaintiffs filed an amended complaint with 150 pages inclusive of exhibits and 15 separate "causes of action" (the "Complaint"). In the Complaint, Plaintiffs allege that they are the great-grandchildren of Anna Short Harrington, who they allege served as the advertising character "Aunt Jemima" in unidentified appearances and print ads between 1935 and her death in 1955. Plaintiffs further allege that as a result of Ms. Harrington's work as Aunt Jemima, they are entitled to \$2 billion dollars of damages from the

PepsiCo Defendants. The Complaint includes claims for “deprivation of the right of publicity under New York law” (Count 1); “deprivation of the right of publicity under Illinois Law” (Count 2); “violation of the rights of publicity under Illinois and New York common law” (Count 3); “civil conspiracy” (Count 4); “violations of federal unfair competition” (Count 5); “breach of contract” (Count 6); “fraud by concealment” (Count 7); “promissory fraud” (Count 8); “conversion” (Count 9); “accounting” (Count 10); “unjust enrichment and disgorgement” (Count 11); “disparate impact under the International Convention on the Elimination of all Forms of Racial Discrimination” (Count 12); “violation of the International Convention on the Elimination of all Forms of Racial Discrimination” (Count 13); “deceptive acts and practices” (Count 14); and “attorney’s fees and costs” (Count 15). All 15 claims should be dismissed with prejudice for the reasons set forth below and more fully discussed in the supporting memorandum that the PepsiCo Defendants have filed and incorporate herein by reference.

3. All of Plaintiffs claims fail for at least three independent reasons. First, Plaintiffs do not allege that a lawful probate estate for Ms. Harrington’s estate was filed, approved or opened by any court upon her death, or that they are lawful executors or administrators of her estate. Accordingly, even assuming that Plaintiffs are Ms. Harrington’s great-grandchildren, as a matter of law, they lack standing to assert claims on behalf of the estate of Ms. Harrington.

4. Second, to the extent Plaintiffs allege claims that are recognized under some applicable law, the statute of limitations for all of those claims lapsed many years ago.

5. Third, each of Plaintiffs’ fifteen claims is defective as a matter of law. Plaintiffs either fail to plead a claim recognized by law, fail to plead the elements necessary to establish a claim recognized by the law, or the claim is implausible or fails on its face. Additionally, the Complaint makes no allegations that support any claim against Ms. Silverberg.

WHEREFORE, the PepsiCo Defendants respectfully requests that the Court grant their Motion and enter an order dismissing Plaintiffs' Complaint with prejudice.

Dated: October 27, 2014

Respectfully submitted,

By: /s/ Dean N. Panos

Dean N. Panos

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**Attorneys for PepsiCo, Inc., The Quaker  
Oats Company, and Janet Lynn Silverberg**

**CERTIFICATE OF SERVICE**

Jason M. Bradford, an attorney, hereby certifies that on October 27, 2014, he caused a true and correct copy of the foregoing Motion to dismiss to be served using the Court's electronic case filing system, which will send electronic notification of such filing to all parties registered with the Court's electronic case filing system. In addition, the following parties that are not registered with the Court's electronic case filing system were served via United States Postal Service First Class Mail and facsimile:

Dannez W. Hunter  
1275 Lincoln Avenue  
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St. Paul, Minnesota  
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Dated: October 27, 2014

By: /s/ Jason M. Bradford

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